



JC17 R PCT/PTO 16 APR 2001
RECEIVED
Attorney Docket No. T9212 PCT US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

ART UNIT)
EXAMINER:)
APPLICANT: J. Carman)
SERIAL NO.: 09/744,614) PETITION TO MAKE SPECIAL
FILED: January 26, 2001) UNDER
FOR: METHODS FOR STABILIZING) 37 C.F.R. § 1.102
AND CONTROLLING APOMIXIS)
DOCKET: T9212 PCT US)

Commissioner for Patents
Washington, D.C., 20231

Sir:

This communication is a Petition To Make Special Under 37 C.F.R. § 1.102. Enclosed herewith is a check in the amount of \$130.00 for payment of the fee associated with this Petition, as set forth in 37 C.F.R. § 1.17(i). Authorization is hereby given for the Commissioner to charge any additional fee or to credit any overpayment in connection with this Petition to Deposit Account No. 50-0836

I hereby certify that this correspondence is being deposited with the United States Postal Service at first class priority postage rate of an envelope addressed to Commissioner for Patents, Washington, D.C. 20231, on the 11th day of April, 2001.

09/20/2001 GPOYNE 00000001 500836 89744614
Robert Howard

Attest: J. Howard
Attorney Report Date: 01 FEB 2001 130.00 CH
Attorney Fee Applicant

The PTO did not receive the following
listed items:

No check received

Applicant respectfully submits that the present Petition may be granted on either of both of the following grounds set forth in MPEP § 708.02.

VIII. Special Examining Procedure for Certain New Applications—Accelerated Examination; and

XII. Special Status for Applications Relating to Biotechnology Filed by Applicants Who Are Small Entities.

I. Accelerated Examination Under MPEP § 708.02(VIII)

Under MPEP § 708.02(VIII), a new application, one that has not received any examination by the examiner, may be granted special status provided that Applicant complies with each of the following items:

- A. Submits a petition to make special accompanied by the fee set forth in 37 C.F.R. § 1.17(i);
- B. Presents all claims directed to a single invention, or if the Office determines that all of the claims presented are not obviously directed to a single invention, will make an election without traverse as a prerequisite to the grant of special status;
- C. Submits a statement that a pre-examination search was made, listing the field of search by class, subclass, publication, and the like,
- D. Submits one copy of each of the references deemed most closely related to the subject matter encompassed by the claims, if such references are not already of record; and
- E. Submits a detailed discussion of the references, pointing out with the particularity

required by 37 C.F.R. §§ 1.111(b) and (c) how the claimed subject matter is patentable over the references

These requirements are fulfilled as follows

This application is a new national stage application of International Application No. PCT/US00/29905, which has an International Filing Date of October 30, 2000. This application has not yet been examined by the examiner

This paper is a Petition To Make Special accompanied by the fee required under 37 C.F.R. § 1.17(i).

It is respectfully submitted that the claims presented in the application are directed to a single invention. If the Office determines that all of the claims presented are not obviously directed to a single invention, Applicant will make an election without traverse as a prerequisite to the grant of special status

A pre-examination search has been conducted. Enclosed herewith is a copy of a form PTO-1449 that has been submitted in an Information Disclosure Statement filed in this application. Copies of these references are enclosed with the Information Disclosure Statement, are therefore of record in the present application, and thus duplicates are not attached.

None of these references are closely related to the present invention. The "most closely related" references, however, will now be discussed.

That, 42 Int'l Rice Comm'n Newsletter 28-34 (1993), discloses: "Two new apomictic rice hybrids were released in China. Selecting mutants for apomixis from natural tetraploids or from interspecific or intergeneric wide crosses in rice is suggested. Genetic analysis at the molecular level, which is supported by FAO in China, could lead ultimately to the fixation of heterosis in

inbreds without the need for hybrids." Thus, That teaches selecting mutants for apomixis from natural tetraploids or from interspecific or intergeneric wide crosses in rice. That fails to teach or suggest an ability for producing apomixis by hybridization in rice without requiring mutation. That also fails to teach preselecting parents for female reproductive traits and photosensitivity, nor does it teach the type of day length responses or reproductive traits claimed in the present application.

Bashaw et al., Apomictic Grasses, in 2 Principles of Cultivar Development 40-82 (1987), is a review of apomixis that includes a discussion of mechanisms of apomixis, uses of apomixis, and identification of apomictic plants. Bashaw does not teach preselecting parents for female reproductive traits and photosensitivity, nor does it teach the type of day length responses or reproductive traits claimed in the present application. Bashaw teaches that apomixis is caused by "no more than two genes" (Bashaw at 45) or mutation.

B.K. Kindiger, Apomictic Maize, U.S. Patent No. 5,710,367 (1998), discloses apomictic maize/*Tripsacum* hybrids having a ratio of maize chromosomes to *Tripsacum* chromosomes of at least 30:9. This patent contemplates a model of apomixis wherein two independently segregating loci are responsible for conferring apomixis: one dominant gene N for controlling nonreduction of the egg and one dominant gene A for controlling apomictic development of the egg (column 6, lines 20-44). Kindiger fails to disclose or suggest preselecting parents for female reproductive traits and photosensitivity, nor does it teach the type of day length responses or reproductive traits claimed in the present application.

In view of the above, it is respectfully submitted that the requirements of MPEP § 708.02(VIII) have been complied with, and therefore granting of the present Petition to make special is respectfully requested.

II. Special Status Under MPEP § 708.02(XII)

Under MPEP § 708.02(XII), special status may be granted to applicants who file a petition with the petition fee under 37 C.F.R. § 1.17(i) requesting special status and

- A. Stating that small entity status has been established or include a statement establishing small entity status,
- B. Stating that the subject of the patent application is a major asset of the small entity, and
- C. State that the development of the technology will be significantly impaired if examination of the patent application is delayed, including an explanation of the basis of the making the statement.

These requirements for special status have been complied with as will be described below.

The present paper is a Petition To Make Special and includes the fee set forth at 37 C.F.R. § 1.17(i).

Small entity status has been established in the previous application, and Applicant respectfully submits that small entity status is appropriate and proper in the present application.

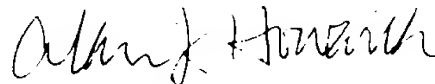
The subject of the present application is a major asset of the small entity. The present application has been assigned by the inventor, John G. Carman, to Utah State University, which qualifies as a small entity by virtue of being a non-profit university of higher learning. Utah State University has licensed the present application to Apomyx, Inc., which also qualifies as a small entity by virtue of having fewer than 500 employees. By virtue of the license, Apomyx, Inc. is the party in interest with respect to the subject matter of the present application. Further, the subject matter of the present application is a major asset of Apomyx, Inc.

The development of the technology will be significantly impaired if examination of the patent application is delayed. Apomyx, Inc. is currently raising venture capital to fund the further development of the invention. Investors are reluctant to commit the large sums of money necessary to fund development of the technology without the assurance provided by an issued U.S. patent. Without such funds, further development of the technology will be delayed. Therefore, the prompt examination of the present application is crucial to obtaining the venture capital, and a delay in examination of the present application will result in significant impairment of development of the technology.

In view of the above, it is respectfully submitted that the present application is entitled to special status under the requirements of MPEP § 708.02(XII). Therefore, granting of this Petition is respectfully requested.

Dated this 11th day of April, 2001.

Respectfully submitted,



Alan J. Howarth, Ph.D.
Attorney for Applicant
Registration No. 36,553
Customer No. 020450

CLAYTON, HOWARTH & CANNON, P.C.
P.O. Box 1909
Sandy, Utah 84091
Telephone: (801) 255-5335
Facsimile: (801) 255-5338